

DOUBLE TAXATION: TAXES ON INCOME

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Modified and supplemented by agreement of May 6 and 31, 1946;¹
convention of October 18, 1946;² protocol of May 17, 1948;³ and
convention of June 22, 1956⁴
Superseded August 11, 1968, by convention of July 28, 1967⁵

59 Stat. 893; Treaty Series 988

CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE ESTABLISHMENT OF RULES OF RECIPROCAL ADMINISTRATIVE ASSISTANCE IN THE CASE OF INCOME AND OTHER TAXES

THE PRESIDENT OF THE UNITED STATES OF AMERICA AND THE PRESIDENT OF THE FRENCH REPUBLIC, being desirous of avoiding double taxation and of establishing rules of reciprocal administrative assistance in the case of income and other taxes, have decided to conclude a Convention and for that purpose have appointed as their respective plenipotentiaries:

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

MR. WILLIAM CHRISTIAN BULLITT, Ambassador Extraordinary and Plenipotentiary of the United States of America to France;

THE PRESIDENT OF THE FRENCH REPUBLIC:

M. GEORGES BONNET, Member of the Chamber of Deputies, Minister for Foreign Affairs,

who, having communicated to one another their full powers found in good and due form, have agreed upon the following Articles:

¹ *Post*, p. 1166.

² TIAS 1982, *post*, p. 1178.

³ TIAS 1982, *post*, p. 1251.

⁴ 8 UST 843; TIAS 3844.

⁵ 19 UST 5280; TIAS 6518.

TITLE I
Double Taxation

ARTICLE 1⁶

The taxes referred to in this Convention are:

(a) In the case of the United States of America:

The federal income taxes, including surtaxes and excess-profits taxes;

(b) In the case of France:

- (1) The real estate tax;
- (2) The industrial and commercial profits tax;
- (3) The annual tax on undistributed profits;⁷
- (4) The agricultural profits tax;
- (5) The tax on salaries, allowances and emoluments, wages, pensions and annuities;
- (6) The professional profits tax;
- (7) The tax on income from securities and movable capital;
- (8) The general income tax.

ARTICLE 2⁸

Income from real property, including income from agricultural undertakings, shall be taxable only in the State in which such real property is situated.

ARTICLE 3

An enterprise of one of the contracting States is not subject to taxation by the other contracting State in respect of its industrial and commercial profits except in respect of such profits allocable to its permanent establishment in the latter State.

No account shall be taken, in determining the tax in one of the contracting States, of the purchase of merchandise effected therein by an enterprise of the other State for the purpose of supplying establishments maintained by such enterprise in the latter State.

The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.

The term "industrial and commercial profits" shall not include the following:

⁶ For modifications and supplements to art. 1, see convention of June 22, 1956 (8 UST 843; TIAS 3844).

⁷ Reference to tax on undistributed profits eliminated by convention of Oct. 18, 1946 (TIAS 1982, *post*, p. 1182).

⁸ See also para. II, protocol of signature, p. 1056.

- (a) Income from real property;
- (b) Income from mortgages, from public funds, securities (including mortgage bonds), loans, deposits and current accounts;
- (c) Dividends and other income from shares in a corporation;
- (d) Rentals or royalties arising from leasing personal property or from any interest in such property, including rentals or royalties for the use of, or for the privilege of using, patents, copyrights, secret processes and formulae, goodwill, trade marks, trade brands, franchises and other like property;
- (e) Profit or loss from the sale or exchange of capital assets.

Subject to the provisions of this Convention the income referred to in paragraphs (a), (b), (c), (d) and (e) shall be taxed separately or together with industrial and commercial profits in accordance with the laws of the contracting States.

ARTICLE 4

American enterprises having permanent establishments in France are required to submit to the French fiscal administration the same declarations and the same justifications, with respect to such establishments, as French enterprises.

The French fiscal administration has the right, within the provisions of its national legislation and subject to the measures of appeal provided in such legislation, to make such corrections in the declaration of profits realized in France as may be necessary to show the exact amount of such profits.

The same principle applies *mutatis mutandis* to French enterprises having permanent establishments in the United States.

ARTICLE 5 ⁹

When an American enterprise, by reason of its participation in the management or capital of a French enterprise, makes or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with a third enterprise, any profits which should normally have appeared in the balance sheet of the French enterprise, but which have been in this manner, diverted to the American enterprise, are, subject to the measures of appeal applicable in the case of the tax on industrial and commercial profits, incorporated in the taxable profits of the French enterprise.

The same principle applies *mutatis mutandis*, in the event that profits are diverted from an American enterprise to a French enterprise.

⁹ For an amendment to art. 5, see convention of June 22, 1956 (8 UST 843; TIAS 3844).

ARTICLE 6 ¹⁰

Income derived by navigation enterprises of one of the contracting States from the operation of ships documented under the laws of that State shall continue to benefit in the other State by the reciprocal tax exemptions accorded by the exchange of notes of June 11 and July 8, 1927 ¹¹ between the United States of America and France.

Income which an enterprise of one of the contracting States derives from the operation of aircraft registered in that State shall be exempt from taxation in the other State.

ARTICLE 7 ¹²

Royalties from real property or in respect of the operation of mines, quarries or other natural resources shall be taxable only in the contracting State in which such property, mines, quarries or other natural resources are situated.

Royalties derived from within one of the contracting States by a resident or by a corporation or other entity of the other contracting State as consideration for the right to use copyrights, patents, secret processes and formulae, trade marks and other analogous rights shall be exempt from taxation in the former State, provided such resident, corporation or other entity does not have a permanent establishment there.

ARTICLE 8 ¹³

Wages, salaries and similar compensation and pensions paid by one of the contracting States or by a political subdivision thereof to individuals residing in the other State shall be exempt from taxation in the latter State.

Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

ARTICLE 9 ¹⁴

Income from labor or personal services shall be taxable only in the State in which the taxpayer carries on his personal activity.

This provision does not apply to the income referred to in Article 8.

¹⁰ For a supplement to art. 6, see *ibid.*

¹¹ EAS 12, *ante*, p. 955.

¹² For modifications of art. 7, see convention of Oct. 18, 1946 (TIAS 1982), *post*, p. 1182.

¹³ See also para. IV, protocol of signature, p. 1057, and art. 7 of convention of Oct. 18, 1946 (TIAS 1982), *post*, p. 1182.

¹⁴ For amendments to art. 9, see protocol of May 17, 1948 (TIAS 1982), *post*, p. 1252, and convention of June 22, 1956 (8 UST 843; TIAS 3844).

ARTICLE 10¹⁵

Income from the exercise of a liberal profession shall be taxable only in the State in which the professional activity is exercised.

There is the exercise of a liberal profession in one of the two contracting States only when the professional activity has a fixed center in that country.

ARTICLE 11

Gains derived in one of the contracting States from the sale or exchange of stocks, securities or commodities by a resident or a corporation or other entity of the other contracting State shall be exempt from taxation in the former State, provided such resident or corporation or other entity has no permanent establishment in the former State.

ARTICLE 12

Students from one of the contracting States residing in the other contracting State exclusively for the purpose of study shall not be taxable by the latter State in respect of remittances received from within the former State for the purpose of their maintenance or studies.

ARTICLE 13¹⁶

In the calculation of taxes established in one of the contracting States on the use of property or increment of property of an enterprise of the other State, account shall be taken only of that portion of the capital situated or employed and allocable to a permanent establishment within the former State.

The foregoing provision shall apply to the French "patente" tax and the United States capital stock tax even though these two taxes have not been referred to in Article 1 of the present Convention.

In the application of the present Article navigation enterprises of one of the contracting States, enjoying in the other State the benefits of Article 6 of the present Convention, shall not be considered as having a permanent establishment in the latter State insofar as shipping activities are concerned.

ARTICLE 14

It is agreed that double taxation shall be avoided in the following manner:

A—As regards the United States of America:

Notwithstanding any other provision of this Convention, the United States of America in determining the income and excess-profits taxes, including all surtaxes, of its citizens, or residents, or corporations may include in the

¹⁵ For a modification of art. 10, see protocol of May 17, 1948 (TIAS 1982), *post*, p. 1252.

¹⁶ For a supplement to art. 13, see convention of June 22, 1956 (8 UST 843; TIAS 3844).

basis upon which such taxes are imposed, all items of income taxable under the Revenue Laws of the United States of America, as though this Convention had not come into effect. The United States of America shall, however, deduct from the taxes thus computed the amount of French income tax paid. This deduction shall be made in accordance with the benefits and limitations of Section 131 of the United States Internal Revenue Code relating to credit for foreign taxes.

B—*As regards France:*¹⁷

a) *Schedular taxes.*

Income from securities, debts and trusts having its source in the United States of America shall be subject in France to the tax on income from securities; but this tax shall be reduced by the amount of the tax already paid in the United States of America on the same income. In consideration of the fiscal regime to which the legislation of the United States of America subjects the income of non-resident aliens and foreign corporations or other entities, the deduction of the tax paid in the United States of America shall be effected in a lump sum through a reduction of 12¹⁸ in the rate of the tax established by the French law.

The income other than that indicated in the preceding paragraph shall not be subject to any schedular tax in France when, according to this Convention, it is taxable in the United States of America.

b) *General tax on revenue.*

Notwithstanding any other provision of the present Convention, the general income tax can be determined according to all the elements of taxable income as imposed by French fiscal legislation.

However, the provisions of the first paragraph of Article 114 of the French Code on direct taxation relative to the taxation of aliens domiciled or resident in France shall continue to be applied.

ARTICLE 15¹⁹

In derogation of Article 3 of the Decree of December 6, 1872, American corporations which maintain in France permanent establishments shall be liable to the tax on income from securities on three-fourths of the profits actually derived from such establishments, the industrial and commercial

¹⁷ For amendments to art. 14 B, see convention of Oct. 18, 1946 (TIAS 1982), *post*, p. 1182; protocol of May 17, 1948 (TIAS 1982), *post*, p. 1251, and convention of June 22, 1956 (8 UST 843; TIAS 3844).

¹⁸ Amended to read "a reduction of 25" by convention of Oct. 18, 1946 (TIAS 1982, *post*, p. 1182).

¹⁹ For a modification of art. 15, see convention of June 22, 1956 (8 UST 843; TIAS 3844).

profits being determined in accordance with Articles 3 and 4 of this Convention.

The remaining one-fourth shall, in all cases, be taken as the basis of the annual tax on undistributed profits applicable to the same corporations.²⁰

ARTICLE 16 ²¹

An American corporation shall not be subject to the obligations prescribed by Article 3 of the Decree of December 6, 1872, by reason of any participation in the management or in the capital of, or any other relations with a French corporation. In such case, the tax on income from securities continues to be levied, in conformity with French legislation, on the dividends, interest and all other distributions made by the French enterprise; but it is moreover collectible, if the occasion arises, and subject to the measures of appeal applicable in the case of the tax on income from securities, with respect to the profits which the American corporation derives from the French corporation under the conditions prescribed in Article 5.

ARTICLE 17

The American corporations subject to the provisions of Article 3 of the Decree of December 6, 1872 who were not placed under the special regime established by Articles 5 and 6 of the Convention for the avoidance of double income taxation between the United States of America and France, signed April 27, 1932,²² may, during a new period of six months from the date of the entry into force of the present Convention, exercise with reference to past years, the option provided in those two articles under the conditions which they prescribe.

Moreover, the American corporations contemplated in the third paragraph of Article 10 of the Convention of April 27, 1932, may be admitted to benefit from the provisions of that paragraph, when the tax has not yet been paid, if the latter was not found to be payable, prior to May 1, 1930, by a definitive judicial decision or if such decision has been the subject of an appeal in cassation.²³

ARTICLE 18

Any United States income tax liability remaining unpaid as at the effective date of this Convention for years beginning prior to January 1, 1936 of any individual resident of France (other than a citizen of the United States of

²⁰ Second paragraph of art. 15 abrogated by convention of Oct. 18, 1946 (TIAS 1982, *post*, p. 1182).

²¹ For an amendment to art. 16, see convention of June 22, 1956 (8 UST 843; TIAS 3844).

²² TS 885, *ante*, p. 977.

²³ For a supplement to art. 17, see convention of Oct. 18, 1946 (TIAS 1982), *post*, p. 1183.

America) or of a French corporation may be adjusted by the Commissioner of Internal Revenue of the United States of America, on the basis of the provisions of the United States Revenue Act of 1936. However, no adjustment will be made more than two years subsequent to the effective date of this Convention unless the taxpayer files a request with the Commissioner of Internal Revenue prior to such date.

ARTICLE 19²⁴

Notwithstanding any other provision of this Convention, in order to avoid double taxation on public servants, employees of one of the contracting States being citizens of that State and remunerated by it, who have been received by the other State to perform services in such State shall be exempt in their principal place of residence from direct and personal taxes whether national, state or local.

Such employees who own real property in the State in which they perform services shall not benefit from the above exemptions with respect to the taxes levied on such real property. Employees who engage in any private gainful occupation in such State shall not be entitled to any exemption under this Article.

TITLE II²⁵

Fiscal Assistance

ARTICLE 20

With a view to the more effective imposition of the taxes to which the present Convention relates, the contracting States undertake, on condition of reciprocity, to furnish information of a fiscal nature which the authorities of each State concerned have at their disposal, or are in a position to obtain under their own laws, that may be of use to the authorities of the other State in the assessment of the said taxes.

Such information shall be exchanged between the competent authorities of the contracting States in the ordinary course or on request.

ARTICLE 21

In accordance with the preceding Article, the competent authorities of the United States of America will transmit to the competent authorities of France, as regards any person, corporation or other entity (other than a citizen, corporation or other entity of the United States of America) having an address in France and deriving from sources within the United States of America rents, dividends, interest, royalties, income from trusts, wages, salaries, pensions, annuities, or other fixed or determinable periodical income,

²⁴ For a supplement to art. 19, see protocol of May 17, 1948 (TIAS 1982), *post*, p. 1252.

²⁵ Provisions of title II superseded and replaced by provisions of title III of convention of Oct. 18, 1946, to the extent that the latter provisions are applicable with respect to the taxes which are the subject of the convention of July 25, 1939.

the name and address of such person, corporation or other entity as well as the amount of such income.

The competent authorities of France will transmit to the competent authorities of the United States of America, as regards any person, corporation or other entity (other than a citizen, corporation or other entity of France) having an address in the United States of America and deriving from sources within France rents, dividends, interest, royalties, income from trusts, wages, salaries, pensions, annuities, or other fixed or determinable periodical income, the name and address of such person, corporation or other entity as well as the amount of such income.

The information relating to each year will be transmitted as soon as possible after December 31.

ARTICLE 22

The competent authorities of each of the contracting States shall be entitled to obtain, through diplomatic channels, from the competent authorities of the other contracting State, except with respect to citizens, corporations or other entities of the State to which application is made, particulars in concrete cases necessary for the establishment of the taxes to which the present Convention relates.

However, the competent authorities of each State shall not be prevented from transmitting to the competent authorities of the other State information relating to their own nationals (citizens, corporations or other entities) if they deem it opportune for the prevention of fiscal evasion.

ARTICLE 23

Each contracting State undertakes to lend assistance and support in the collection of the taxes to which the present Convention relates, together with interest, costs, and additions to the taxes and fines not being of a penal character according to the laws of the State requested, in the cases where the taxes are definitively due according to the laws of the State making the application.

In the case of an application for enforcement of taxes, revenue claims of each of the contracting States which have been finally determined shall be accepted for enforcement by the State to which application is made and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

The application shall be accompanied by such documents as are required by the laws of the State making the application, to establish that the taxes have been finally determined.

If the revenue claim has not been finally determined, the State to which application is made may, at the request of the State making the application, take such measures of conservancy as are authorized by the laws of the former State for the enforcement of its own taxes.

The assistance provided for in this Article shall not be accorded with respect to the citizens, corporations or other entities of the State to which application is made.

ARTICLE 24

In no case shall the provisions of Article 22 relating to particulars in concrete cases, or of Article 23 relating to mutual assistance in the collection of taxes, be construed so as to impose upon either of the contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either contracting State, or to supply particulars which are not procurable under the law of the State to which application is made, or that of the State making application.

The State to which application is made for information or assistance shall comply as soon as possible with the request addressed to it. Nevertheless, such State may refuse to comply with the request for reasons of public policy or if compliance would involve violation of a business, industrial or trade secret. In such case it shall inform, as soon as possible, the State making the application.

ARTICLE 25

Any taxpayer who shows proof that the action of the revenue authorities of the contracting States has resulted in double taxation in his case in respect of any of the taxes to which the present Convention relates, shall be entitled to lodge a claim with the State of which he is a citizen or, if the taxpayer is a corporation or other entity, with the State in which it is created or organized. Should the claim be upheld, the competent authority of such State may come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

ARTICLE 26

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this Convention. With respect to the provisions of this Convention relating to exchange of information and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, rates of conversion of currencies, transfer of sums collected, minimum amounts subject to collection, payment of costs of collection, and related matters.

TITLE III

General Provisions

ARTICLE 27

The present Convention shall be ratified, in the case of the United States of America by the President, by and with the advice and consent of the Sen-

ate, and in the case of France, by the President of the French Republic with the consent of the Parliament.

This Convention shall become effective on the first day of January following the exchange of the instruments of ratification.

The Convention shall remain in force for a period of five years and indefinitely thereafter but may be terminated by either contracting State at the end of the five-year period or at any time thereafter, provided six months' prior notice of termination has been given, the termination to become effective on the first day of January following the expiration of the six-month period.

Upon the coming into effect of this Convention, the Convention for the avoidance of double income taxation between the United States of America and France, signed April 27, 1932 shall terminate.

Done at Paris, in duplicate, in the English and French languages, this 25th day of July, 1939.

WILLIAM C. BULLITT [SEAL]

GEORGES BONNET [SEAL]

PROTOCOL

At the moment of signing the present Convention for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance in the case of income and other taxes, the undersigned Plenipotentiaries have agreed that the following provisions shall form an integral part of the Convention:

I

The present Convention is concluded with reference to American and French law in force on the day of its signature.

Accordingly, if these laws are appreciably modified the competent authorities of the two States will consult together.

II

The income from real property referred to in Article 2 of the present Convention shall include profits from the sale or exchange of the said property, but shall not include interest on mortgages or obligations secured by the said property.

III

As used in this Convention:

(a) The term "permanent establishment" includes branches, mines and oil wells, plantations, factories, workshops, stores, purchasing and selling and other offices, agencies, warehouses, and other fixed places of business but does not include a subsidiary corporation.

When an enterprise of one of the contracting States carries on business in the other State through an employee or agent, established there, who has general authority to negotiate and conclude contracts or has a stock of merchandise from which he regularly fills orders which he receives, this enterprise shall be deemed to have a permanent establishment in the latter State. But the fact that an enterprise of one of the contracting States has business dealings in the other State through a bona fide commission agent or broker shall not be held to mean that such enterprise has a permanent establishment in the latter State.

Insurance enterprises shall be considered as having a permanent establishment in one of the States as soon as they receive premiums from or insure risks in the territory of that State.

(b) The term "enterprise" includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

(c) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "French enterprise".

(d) The term "United States enterprise" means an enterprise carried on in the United States of America by a resident of the United States of America or by a United States corporation or other entity.

The term "United States corporation or other entity" means a partnership, corporation or other entity created or organized in the United States of America or under the law of the United States of America or of any State or Territory of the United States of America.

(e) The term "French enterprise" is defined in the same manner, *mutatis mutandis*, as the term "United States enterprise".

IV

The term "life annuities" referred to in Article 8 of this Convention means a stated sum payable periodically at stated times during life, or during a specified number of years to the person who has paid the premiums or a gross sum for such an obligation.

V

Citizens and corporations or other entities of one of the contracting States within the other contracting State shall not be subjected as regards the taxes referred to in the present Convention, to the payment of higher taxes than are imposed upon the citizens or corporations or other entities of such latter State.

VI

The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit, allowance, or other advantage accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

VII

Documents and information contained therein, transmitted under the provisions of this Convention by one of the contracting States to the other contracting State shall not be published, revealed or disclosed to any person except to the extent permitted under the laws of the latter State with respect to similar documents or information.

VIII ²⁶

As used in this Convention the term "competent authority" or "competent authorities" means, in the case of the United States of America, the Secretary of the Treasury and in the case of France, the Minister of Finance.

IX

The term "United States of America" as used in this Convention in a geographic sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

X

The term "France", when used in a geographic sense, indicates continental France, exclusive of Algeria and the Colonies.

XI

Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement.

Done in duplicate at PARIS, this 25th day of July, 1939.

WILLIAM C. BULLITT
GEORGES BONNET

²⁶ For a modification of para. VIII, see convention of Oct. 18, 1946 (TIAS 1982), *post*, p. 1183.